



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN - 7 2004

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Captain William G. Schubert
Maritime Administrator
U.S. Maritime Administration
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

Dear Captain Schubert:

I am writing to clarify several issues that have recently been raised in discussions between the Environmental Protection Agency and MARAD regarding the export to the United Kingdom of ships containing Polychlorinated Biphenyls (PCBs) under section 6(e) of the Toxic Substances Control Act (TSCA). The issues that our staffs have been discussing include how EPA might permit exports under TSCA 6(e), information needed to support a rule to that effect, and timing of the rule.

EPA believes that the export of PCBs in the ships is possible under either TSCA § 6(e)(2)(B) or § 6(e)(3)(B), depending upon the history of the PCBs present in the ships. Under § 6(e)(2)(B), EPA may authorize the export of the PCBs in these ships, provided a finding of no unreasonable risk to health or the environment can be made, and all PCBs in the ship were sold, for purposes other than resale, before July 1, 1979 [§ 6(e)(3)(C)]. Alternately, under § 6(e)(3)(B), EPA may grant a one-year exemption to export the ships, provided a determination can be made that (1) there is no unreasonable risk and (2) good faith efforts have been made by MARAD to find alternatives to exporting the ships. While the issue of using § 6(e)(1) has been raised, we believe given the interpretation of § 6(e) by the 9th Circuit Court of Appeals that the more appropriate sections to use are §§ 6(e)(2) and (3).

Based on discussions between our staffs, the set of ships that MARAD would like to export include some vessels which contain only PCBs which were sold for purposes other than resale before July 1, 1979, and thus would be eligible for a §6(e)(2)(B) authorization, and some which we believe would not be eligible for a §6(e)(2)(B) authorization but rather may be eligible for a one-year § 6(e)(3)(B) exemption. In both cases, EPA would need sufficient information to make a determination of no unreasonable risk for both the towing operation and the scrapping, management and disposal operations in England. To authorize the export of these ships under § 6(e)(2)(B), EPA would need sufficient information to support a conclusion that the PCBs on

the ships meet the pre-July 1, 1979, qualification imposed by § 6(e)(3)(C). For those ships that would not qualify for the § 6(e)(2)(B) authorization, this information about the history of the PCBs is unnecessary. Rather, information would be needed to demonstrate that good faith efforts have been made to find alternatives to export, i.e., to scrap or otherwise manage these ships domestically. Enclosed is a comprehensive list of the data that EPA would need to support a rulemaking in either case.

As your staff are aware, EPA has committed to conduct any rulemaking in a highly expedited manner. We believe that we can prepare a Notice of Proposed Rulemaking for publication in the Federal Register within 4 months of receiving a complete application package with all supporting material (other than the dismantling facility's final permits which we understand will not be issued before 1 May, 2004). Given that this is a highly expedited schedule, as issuing rules under TSCA section 6(e) can take much longer, it is important that MARAD's application be complete, i.e., that it contain all the data itemized in the enclosure to this letter. However, while EPA will prepare a draft Notice of Proposed Rulemaking, it cannot conduct the necessary final Agency and inter-Agency reviews of the draft Notice of Proposed Rulemaking until Able U.K. has secured all necessary permits to allow them to dismantle the ships in an environmentally sound manner. As these permits are essential to EPA's determination of no unreasonable risk, publishing a proposed determination in advance would not be appropriate. In addition, it is legally necessary for EPA to have a complete rulemaking record assembled prior to publication of the proposed rule; otherwise, a supplemental notice of availability must be published in the Federal Register, which would only cause delay. Once EPA has received copies of all the necessary permits issued to Able U.K., publication of EPA's proposed rule could follow within six weeks, assuming successful completion of inter-agency review. However, delays in gathering data, or problems with Able U.K.'s permits would make it very difficult or impossible to meet this goal.

We look forward to continuing to work with you and your staff. Please contact me if you have any questions, or your staff may contact Maria Doa, of my staff, at 566-0718

Sincerely,



Susan B. Hazen
Principal Deputy Assistant Administrator

Enclosure

Enclosure: MARAD TSCA 6(e) Export Proposal:
Information required to support EPA's determination

Background:

- Provide citations for National Maritime Heritage Act and any referenced Congressional directives. Specific obligations mentioned such as deadlines, best value and reports to Congress should be cited. Copies of all cited material would be helpful to EPA.

Specific information to support a determination of no unreasonable risk:

Towing Risks:

- Provide copies of the following documentation:
 - Each trip and tow survey by independent surveyor
 - Each insurance underwriter survey (Lloyds')
 - Each U.K. Maritime and Coast Guard Agency (MCA) survey
 - Each tow company tow-master survey
 - Each verification survey
 - Each U.S. Coast Guard review of all tow surveys and preparations prior to accomplishing a loadline survey and issuing the tow certificate (copy of decision and justification)
 - Any additional information that would help EPA assess the risk of a ship sinking, the risk posed to the environment by the sinking of a ship, or any environmental hazards posed by one of the towed ships without sinking (e.g., releases of PCBs).

Comparative Towing Risks:

- Cite examples of how procedures for domestic towing are less stringent than those used for transatlantic towing, and how this may affect risks. Provide any available supporting documentation.
- Provide any quantitative data that EPA can use to compare the relative risks associated with towing ships to potential domestic disposal facilities with the risks of transatlantic towing. Such data might examine towing distances, navigational hazards, proximity to sensitive shores, or ecosystems, etc.

Foreign Dismantling/Disposal Risks:

- Able UK dismantling/disposal operations:
 - Cite and provide for the record the standards, e.g., U.K.'s OSHA-style regulations, PCB disposal regulations (40 CFR 761 Subpart D equivalent), that Able UK will follow.

- Cite and provide for the record all of Able UK's national and local permits, with support documentation, e.g., risk assessments, engineers reports.etc Include Able U.K. recent permit submission to the UKEA. **A copy of all materials related to UKEA's forthcoming decision on this permit application must be submitted as soon as it becomes available.**
- Include any accredited Third-party audits, such as conducted under ISO14000 or the European Eco-Management and Audit Scheme (EMAS).
- Describe and document Able UK's ship dismantling facilities and process. Include information on conformity to an appropriate standards such as Basel Convention or OECD technical guidelines.
- If smelting or other true recycling activities, as opposed to dismantling and cutting take place at Able UK, these activities should also be referenced and outlined in the supporting material.
- Cite and provide a more detailed explanation of Able UK's cold-cutting technique (and it's environmental advantages)
- Elaborate on the "other low temperature processes" to be used by Able UK.
- Address how any non-liquid PCB capacitors found during dismantling will be handled; handling as non-hazardous non-regulated waste is inappropriate.
- Other Treatment/Disposal Facilities:
 - Seaton Meadow Landfill: include risk assessment or exposure data or calculations from the local landfill permit(s) and cite.
 - Liquid waste treatment facility: identify and describe facility operations along with risk assessment done for local liquid waste treatment permit(s).
 - U.K.'s two incinerators; identify and submit incinerators' permits or supporting risk assessments so that EPA can model exposures and assess risks.
 - Smelters: if any smelters are to receive scrap metal from Able UK, e.g., cut-up pieces of hull or superstructure covered with PCB-containing paints, identify these facilities and their operating conditions. If smelters need waste management permits to handle material contaminated with PCBs, provide copies.
 - Identify and provide supporting data on any other facilities that will manage PCB materials after processing at Able UK.

Comparative Domestic Disposal Risks:

- Provide any data on domestic ship-scraping operations that EPA can use to compare the relative health and environmental risks of domestic scrapping operations with operations at Able UK.
- Explain any financial requirements that make it difficult for domestic scrappers to do work for MARAD.

For a TSCA 6(e)(2)(B) authorization: specific information to support contention that ships contain no post-July 1, 1979 PCBs:

- Data that demonstrates that ships contain only PCBs sold for purposes other than resale prior to July 1, 1979. Such data might be in the form of maintenance records for the ships or an engineers survey of the vessel.

For a TSCA 6(e)(3)(B) exemption: specific information to support contention that good faith efforts have been made to find alternatives to export:

- Information on MARAD's efforts to scrap or otherwise manage these vessels domestically. Explain reasons why attempts to dispose of these vessels domestically have been unsuccessful.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JAN - 7 2004

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Based on discussions between our staffs, the set of ships that MARAD would like to export include some vessels which contain only PCBs which were sold for purposes other than resale before July 1, 1979, and thus would be eligible for a §6(e)(2)(B) authorization, and some which we believe would not be eligible for a §6(e)(2)(B) authorization but rather are eligible for a one-year § 6(e)(3)(B) exemption. In both cases, EPA would need sufficient information to make a determination of no unreasonable risk for both the towing operation and the scrapping, management and disposal operations in England. To authorize the export of these ships under

CONCURRENCES							
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DATE	08/14	08/14	08/14	08/14			

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We look forward to continuing to work with you and your staff. Please contact me if you have any questions, or your staff may contact Maria Doa, of my staff, at 566-0718

Sincerely,



Susan B. Hazen
Principal Deputy Assistant Administrator

Enclosure

Susie - OGC reviewed the letter a second time.
I incorporated Andrea's comments. See attached

Sandy



Andrea Medici

01/05/04 03:47 PM

To: Sandy Evalenko/DC/USEPA/US@EPA
cc: Robert Perlis/DC/USEPA/US@EPA
Subject: Re: MARAD letter

Sandy -

I did review the letter, and almost all my comments were incorporated. I took another look at it just now, and have just a couple things to add. Thanks.

Andrea



hazen.marad.letter-1-5-04-ogc.v

OGC's comments - see pg 2.

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Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
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Note to Susie --

Attached are two items that we discussed at our MARAD discussion the week before Christmas. The first is a heads up note to the Administrator's office on our efforts with MARAD to develop a Notice of Proposed Rulemaking for the export of ships to the U.K. The other item is a letter for you to send to MARAD's Administrator outlining the on-going discussions between our two Agencies, the specific information that they need to provide to us, and the proposed timeframe. As we discussed briefly at the meeting, MARAD continues to raise the issue of possibly using § 6(e)(1) but OGC believes that the interpretation of § 6(e) by the 9th Circuit Court of Appeals would make it difficult and that it is more appropriate to use Sections 6(e)(2) and (3) as outlined in the letter. Because this issue keeps coming up with MARAD, we felt it was appropriate for your letter to include a specific discussion of authorities.

Please let us know if you would like changes to these documents or would like to discuss further.


Margaret



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Informational

Rich Mc
Note to Tom Gibson and ~~Susan Mulvaney~~:

Subject: Next Steps for Rulemaking on the Export of PCBs in Ships

I want to make sure that you are aware that OPPTS is working with the Maritime Administration (MARAD) to develop a rulemaking to allow for the export of ships to the United Kingdom (UK) for ship scrapping. As you may recall, after seeking enforcement discretion from the Agency to export a limited number of ships to a permitted ship-scrapping facility in England, the permits were withdrawn by the British Government and four ships are in harbor in the UK while the permit issue is resolved. This rulemaking would cover an additional fifteen ships at the James River, Virginia, harbor that were part of the original group of ships to be disposed of at the UK facility. We have committed to MARAD to prepare a proposed rulemaking for these ships within four months once they submit a complete application package with all supporting materials. As part of this effort, we have provided them with a detailed list of the materials and information that must be included.

We have advised MARAD that while we will prepare a draft Notice of Proposed Rulemaking, we are not able to conduct the necessary final Agency and inter-Agency reviews of the draft Notice until the new permits necessary for the UK facility to scrap the ships are issued, as these permits are essential to the statutory determination of no unreasonable risk that EPA must make. At the present time, MARAD believes that the necessary scrapping, management, and disposal permits will not be issued before May 1, 2004. After the permits are issued, we can complete Agency review, and could publish the proposed rule in 6 weeks, assuming successful inter-agency review.

My staff will continue to work with MARAD on a number of issues related to the rulemaking, including the appropriate Sections of TSCA which may be used, and will also be having discussions with DOJ on these issues. In addition, I am sending a letter to the MARAD Administrator outlining the Agency's plans for the rulemaking, the information that they need to provide, and the timing of the proposed rule.

I will keep you informed as this effort progresses or if problems arise. If you have any questions or would like additional information, please call me.

Susan Hazen/William Sanders/Adam Sharp

Attachment

cc: N. Gochnour ✓
R. McKeown
C. Bergen
J. Furey
B. Grumbles
M. McDavit



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
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Captain William G. Schubert
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We look forward to continuing to work with you and your staff. Please contact me if you have any questions, or your staff may contact Maria Doa, of my staff, at 566-0718

Sincerely,

Susan B. Hazen
Principal Deputy Assistant Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Sal
Stewart

1/8/03

INFORMATIONAL

OFFICE OF
PREVENTION, PESTICIDES AND
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Note To: Tom Gibson and Rich McKeown

Subject: Next Steps for Rulemaking on the Export of PCBs in Ships

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My staff will continue to work with MARAD on a number of issues related to the rulemaking and will also be having discussions with DOJ on these issues. In addition, I will be sending a letter to the MARAD Administrator which outlines the Agency's plan for the rulemaking, including the information that they need to provide and the timing of the proposed rule. I will keep you informed as the project progresses.

If you have any questions or would like additional information, please call me.

Susan B. Sharp
Susan Hazen/William Sanders/Adam Sharp

cc: N. Gochnour, C. Kremer, C. Bergen, J. Furey, D. DeLeon

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Informational

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CONCURRENCES							
SYMBOL	18/29	12/31	12/31/03				
SURNAME	Don	Haller	Sennwald				
DATE		0000	0000				

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